THE HON'BLE Dr. JUSTICE G. YETHIRAJULU

W.P.Nos.14858 and 14861 of 1994

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Dated this the 8th day of February, 2006

W.P.No.14848 of 1994:

Between:

Union of India represented by the

Sub-Divisional Officer, Phones,

Telecomunications,

WARANAL – 506 003. .. **Petitioner**

and

Mohd. Sarwar, s/o. Mohd.Yaub Ali,

H.NO.24.2.56, Post Daragha,

Kazipet, Warangal – 506 003, and another

… **Respondents**

W.P.No.14861 of 1994:

Union of India, represented by the

Sub-Divisional Officer, Phones,

Warangal.

and

Mohd. Sadiq Ali,

S/o. Mohd. Yakub Ali,

H.No.24-2-58, (Post) Dargha,

Near Khajipet,

WARANGAL – 506 003, and another

… **Respondents**
THE HON'BLE Dr. JUSTICE G. YETHIRAJULU

W.P.Nos.14858 and 14861 of 1994

COMMON ORDER:

The Union of India represented by the Sub-Divisional Officer (Phones), Department of Telecommunications, Warangal, approached this Court through these writ petitions seeking to declare the Awards dated 27-09-1993 passed by the Industrial Tribunal (Central), Hyderabad, in I.D.Nos.49 and 51 of 1991 as illegal, null and void.

The first respondents in both the writ petitions are the workmen, who raised the dispute before the Industrial Tribunal (Central), at Hyderabad. At the instance of the first respondents, the Government of India, Ministry of Labour, through its proceedings dated 03-10-1991 referred the following dispute in both the matters under Section 10 (1) (d) & (2-A) of the Industrial Disputes Act, 1947 (for short 'the Act') between the petitioner and the first respondents to the Industrial Tribunal for adjudication:

> "whether the action of the Management of M/s. Telecom, Warangal (AP) represented by their Sub-Divisional Officer in terminating the services of Sri Mohd. Sarawar and Sri Mohd. Sadiq Ali without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947 is justified?, if not, to what relief the workmen concerned are entitled ?"

The first respondents in both the writ petitions contended before the Industrial Tribunal that they were recruited and employed by the writ petitioner as casual labour for 304 days during the period from 01-02-1986 to 31-05-1987, but retrenched them on the ground that they were recruited after 30th March, 1985 contrary to the

orders of Director General,
P & T, New Delhi, prohibiting fresh recruitment and employment of Casual Mazdoors. They were not given notice or wages as per the mandatory provision of Section 25-F of the Act. They were subsequently employed during short spells, which is a clear indication that in view of Section 25-B of the Act, the workmen were in continuous service till 31-03-1989 and 30-09-1988 and they were effectively retrenched from service with effect from 01-04-1989 and 01-10-1988 respectively in gross violation of Section 25-F of the Act. They further contended that as per the direction of the Supreme Court, a scheme was formulated by the writ petitioner to absorb the Casual Mazdoors in the regular establishment on each of them rendering one year continuous service and in pursuance of the said scheme, the petitioner absorbed several Mazdoors and granted temporary status to the remaining Casual Mazdoors, through the proceedings dated
07-11-1989 to absorb such persons in the regular establishment in future vacancies. Therefore, the workmen requested to declare that their retrenchment is illegal, null and void and consequently to direct the petitioner to reinstate them into service with full back wages, continuity of service, protection of seniority and other consequential benefits including temporary status pending absorption in the regular establishment.

The writ petitioner filed counters in both the disputes before the Industrial Tribunal contending that the first respondents and other Casual Mazdoors were engaged as and when temporary works are undertaken for laying underground cables and construction of overhead alignments. As soon as the work is over, the employment of Casual Mazdoors came to an end. If any other work is taken up, the Casual Mazdoors came forward for employment and they will be again engaged till the work lasts. The continuation of engagement of Casual Mazdoors depends upon the availability of the work. There is a separate procedure for recruitment of regular employees. Therefore, the claim of the workmen to make them permanent cannot be accepted.

During the course of enquiry before the Industrial Tribunal, the workmen got themselves examined as W.W-1 in both the matters and marked Exs.W-1 to W-5 and Exs.W-1 to W-9 respectively. The Management examined M.W-1 in both the matters and did not mark any documents. The Industrial Tribunal after considering the evidence and after relying on the judgments of the Central Administrative Tribunal, Principal Bench, New Delhi and the Supreme Court in W.P.Nos.373 and 302 of

1986 dated 27-10-1987 held that the orders of writ petitioner in terminating the services of the workmen are
ill-motivated and without any valid grounds, therefore, the said orders are liable to be quashed as arbitrary and illegal.
The Industrial Tribunal further directed that as the action of the Management in terminating the services of the workmen without complying with the provisions of Section 25-F of the Act is not justified, the workmen are entitled to be reinstated into service with full back wages and other attendant benefits. The writ petitioner, being aggrieved by the awards of the Industrial Tribunal, dated 27-09-1993, filed these writ petitions with the prayer as indicated above.

Since both the writ petitions were preferred by the same petitioner against the workmen who were engaged as Casual Mazdoors for undertaking a specific work and as the issues involved in both the writ petitions are common, both the writ petitions are clubbed and this common judgment is delivered.

The Management-writ petitioner in both the writ petitions contended that these workmen and other persons were appointed as Casual Mazdoors for undertaking the specific work of laying underground cables. There was an automatic discharge after completion of the work and they were being engaged as and when there is specific work of such urgent nature. Therefore, the workmen are not entitled for any reliefs as prayed for.

The first respondents in both the writ petitions contended that since they were engaged as Casual Mazdoors for 304 days in a period of one year, they are entitled to be absorbed as regular workmen and even if there are no vacancies, the workmen are entitled to be provided with a temporary status till they are absorbed in regular vacancies.

In the light of the contentions of both parties, the point for consideration is

1. whether the workmen were engaged for a specific purpose and whether the termination of the workmen on completion of the work amounts to retrenchment within the meaning of Section 2 (oo)(bb) of the Act?

2. whether the writ petitioner is required to follow the procedure and non-application of Section 25-F of the Act makes the

discharge of the workmen as illegal and arbitrary? and

3. Whether the workmen are entitled for reinstatement with all consequential benefits?

Point No.1:

The writ petitioner in the statement of claim contended that the Department recruited and employed them as Casual Mazdoors for 304 days during the period from 01-02-1986 to
01-06-1987, but retrenched thereafter on the ground that they were recruited after 30th March, 1985 contrary to the orders of the Director General, P & T, New Delhi, prohibiting any fresh appointment of employment of casual Mazdoors. The workmen were neither given any notice nor paid wages as required under Section 25-F of the Act and they were subsequently employed during short spells. The workmen in both the writ petitions were in continuous service till 31-03-1989 and 30-09-1988 as per Section 25-B of the Act and they were effectively retrenched from service with effect from 01-04-1989 and 01-10-1988 respectively.

It is the specific version of the writ petitioner in the counters filed before the Industrial Tribunal in both the writ petitions that the workmen worked only on contract basis and when the Casual Mazdoors were offered the work as and when it is available. The workmen were never terminated as stated by them. The Department was engaging Casual Mazdoors as and when temporary works are taken up for laying underground cables and construction of overhead alignments. As soon as the work is over, the employment of Casual Mazdoors came to an end. If another work is taken up, they will be again engaged till the works last. The engagement of the Casual Mazdoors depends upon the availability of the work. The workmen were informed clearly at the time of their initial appointment that they were engaged for works of casual nature and as and when such casual works are completed, they will be disengaged from the muster rolls. The workmen also signed on a declaration to that effect and they have to remain idle. Such disengagement will not amount to termination since it is an automatic process in the case of Casual Mazdoors. This version of writ petitioner that the workmen were engaged as Casual Mazdoors for laying underground cables and construction of overhead alignments, which is the temporary nature and they were automatically discharged after the completion of each work was not contradicted by the workmen either through the rejoinder or

through the evidence. Therefore, it can be safely concluded that the workmen were engaged as Casual Mazdoors for the specific purpose of laying underground cables and construction of overhead alignments and they were disengaged after the completion of the work.

Point Nos.2 & 3:

The learned counsel for the writ petitioner drew the attention of this Court to certain judgments relating to this field and it is interesting to note all the principles laid down by the Apex Court, the High Court of Madras and this Court.
The workmen relied on the following judgments.

In ***Daily Rated Casual Labour in P & T v. Union of India and others***, the Supreme Court directed the Telephones Department to workout a scheme to absorb as far as possible the casual labourers who have rendered one year continuous service (with at least 240 days service to their credit).
The workmen, therefore, contended that since the Supreme Court conferred on the workmen the right of absorption in the regular establishment, the casual workmen no longer remains 'casual' after rendering one year continuous service.

The workmen also relied on a judgment of the Principal Bench of the Central Administrative Tribunal, New Delhi, through its judgment dated 04-05-1988 in O.A.No.529 of 1988 in ***Sunderlal & others and Union of India and others*** (unreported), which was upheld by the Supreme court by holding that no distinction can be drawn between Mazdoors recruited before
30-03-185 and those that are recruited on or after that date and that all those who have rendered one year continuous service are entitled to the benefits of the judgment in ***Daily Rated Casual Labour in P & T***'s case (1 supra). But the subsequent legal position drew a distinction between Casual Mazdoors engaged in a work regularly undertaken and Casual Mazdoors engaged for a specific work or a specific time.

In ***Cromption Engineering Company (Madras) Private Limited v. Additional Labour Court and others*** the Madras High Court while considering similar issue held as follows:

"Where the workmen were appointed only for a specific period or for a particular work

and as soon as the period was over or the work was over, their employment automatically came to an end and there is no rule or law which contemplates that such employees must be given work again by the employer."

The Court further held as follows:

"Though casual employees may fall within the scope of the definition of 'workman' in S. 2(s), such employees are not entitled to reinstatement since an order of reinstatement, postulates, the existence of a post in which a particular person was working and with reference to which his employment was terminated. When there was no post and there was no termination of employment, but only there was the employment of a particular individual for a specific period or for a specific work, the employment automatically came to an end on the expiry of such period or after the work was over, and consequently, there was no termination and there was no question of reinstatement."

In ***Nuclear Fuel Complex, Hyderabad v. K. Penta Reddy and others*** a Division Bench of this Court held that casual labour employed by a contractor for a specific job and for a particular period, there is no question of retrenchment under Section 25-F of the Act arises. They are not entitled for regularization in the services of the company, which employed the contractor.

In ***Haryana State F.C.C.W. Store Limited and another v. Ram Niwas and another*** the Supreme Court held as follows:

"retrenchment for workman engaged for a specific purpose and on completion of the purpose does not amount to retrenchment within the meaning of Section 2 (oo)(bb) of the Act. In the case covered by the above decision, in the year 1993 the appellants have been entrusted with the responsibility of procuring wheat and supply the same to Haryana Warehousing Corporation. On account of non-availability of godowns heavy stock of grain had to be stored in the open area at Hasanpur Mandi. For watching and keeping care of the stock lying in the open area necessity of watchman/chowkidar was felt and sanction was sought by the District Manager of the appellant Society. The Managing Director having sanctioned the engagement of watchman/chowkidar the respondents were appointed on contract basis on payment of daily wages till the stocks are disposed of or for a period of three months. It was made clear in the order of the Managing Director that the number of chowkidars/Labourers kept by the District Manager should come down with the clearance of stock lying in the open. The respondents were engaged on 25-05-1993 and 02-06-1993 respectively. The engagement of both the respondents was terminated with effect from 26-04-1994 after the stock lying in the open was cleared. The provisions of Section 25-F of the Act

were not complied with before termination of the respondents."

The above judgments make the position clear that though a Casual Mazdoor comes within the definition of workman under Section 2 (s) of the Act, the termination of the Casual Mazdoor who were engaged for a specific purpose does not amount to retrenchment under Section 2 (oo) (bb) of the Act. Therefore, Section 25-F of the Act was not applicable to cases like the present one.

The first respondents in both the writ petitions contended that they were terminated from service on 31-05-1987, but subsequently engaged for shorter periods till 31-03-1989 and 30-09-1988, therefore, they were effectively retrenched from service with effect from 01-04-1989 and 01-10-1988 respectively.

The above contention is a clear indication that the workmen were being engaged and disengaged depending upon the availability of such work of temporary nature.

In the light of the above circumstances, the non issuing of notice under Section 25-F of the Act or wages, in view of such notice does not make the discharge of the workmen from service for want of work illegal, the Industrial Tribunal did not consider the distinction between the engagement of Casual Mazdoors for a regular work and engagement of Casual Mazdoors for a particular work of temporary nature and ordered reinstatement with all consequential benefits.

In the light of the above discussion, I do not find any illegality in the orders of discharge passed by the petitioner. Therefore, the awards of the Industrial Tribunal dated
27-09-1993 cannot be sustained.

In the result, the writ petitions are allowed and the awards of the Industrial Tribunal dated 27-09-1993 in I.D.Nos.49 and 51 of 1991 are set aside. No order as to costs.

However, it is made clear that this order will not effect the retrenchment of the first respondents as Casual Mazdoors or consideration of providing temporary status or appointment as regular workmen if the petitioner so desires to do.

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Dr.G. YETHIRAJU, J

Date: 08--02—2006

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